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AREA CODE 206  
943-8440

October 26, 1971

Washington State Liquor Control Board  
Olympia, Washington 98504

Gentlemen:

Re: Washington Beer & Wine Wholesalers Association, Inc.  
Our File No. 6312

Attached hereto you will find the following:

Petition of Washington Beer & Wine Wholesalers Association,  
Inc. for Amendment to Rule (49)  
Petition of Washington Beer & Wine Wholesalers Association,  
Inc. for Amendment to Rule (81)

Your consideration of these petitions will be appreciated, and we await  
your favorable consideration and action on them.

Very truly yours,

Vernon L. Lindskog

bc

Encs. as shown

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PLAINTIFF'S EXHIBIT	
CASE NO.	CV04-0360P
EXHIBIT NO.	045

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of the Petition of )  
WASHINGTON BEER & WINE )  
WHOLESALE ASSOCIATION, ) PETITION  
INC. )  
For Amendment of Rule (49) )

Comes now Washington Beer & Wine Wholesalers Association,  
Inc., petitioner herein, and states:

I.

Washington Beer & Wine Wholesalers Association, Inc., 1006  
Securities Building, Seattle, Washington, 98101, hereby petitions the State  
Liquor Control Board, seeking the amendment of Rule (49).

II.

Petitioner seeks the amendment of the rule, substantially as  
set forth hereafter:

(49) BEER WHOLESALE PRICE POSTING (WAC 314-20-100)

(1) Every beer wholesaler shall file with the board  
at its office in Olympia a price posting showing the delivered  
wholesale prices at which any and all brands of beer sold by  
such beer wholesaler shall be sold to retailers within the  
state.

(2) No price posting shall become effective until  
fifteen days after the actual filing thereof with the board. In  
the event a price posting is filed before a previous one has  
become effective, the subsequent filing shall nullify said  
previous price posting.

(3) Each price posting shall be made on a form pre-  
pared and furnished by the board and shall set forth:

(a) All brands, types, packages and containers of  
beer offered for sale by such beer wholesaler.

(b) The delivered wholesale prices thereof to  
retail licensees, including allowances, if any, for  
returned empty containers.

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(4) No beer wholesaler shall sell or offer to sell any package or container of beer to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer wholesaler and then in effect.

(5) Prices posted by a beer wholesaler shall be consistent as between the various packages and containers offered for sale.

(6) No beer wholesaler shall file a price on any item which, in fact, constitutes a "post off." Quantity discounts are prohibited. No price shall be posted which is below "cost," or below "cost of doing business," or a "loss leader," as those terms are defined in Regulation (124)(4). No beer wholesaler shall initiate or be a party to any disruptive pricing practices.

(7) Wholesale prices on a "close-out" item shall be accepted by the board only if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the wholesaler who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price. The wholesale price on such item shall be deemed acceptable only if it is in compliance with the provisions of Regulation (124)(4).

(8) If an existing written contract or memorandum of oral agreement between a licensed brewer, certificate of approval holder, beer importer or beer wholesaler and a beer wholesaler, on file in accordance with Regulation (49.5), is terminated by either party, and a new written contract or memorandum of oral agreement is made by such a supplier with another beer wholesaler in the affected trade area, the board, after receiving such new contract or memorandum of oral agreement and a corresponding wholesale price posting from the newly-designated beer wholesaler, may put such filings into effect immediately: PROVIDED, That prices and other conditions of such filings which are in effect at the time of such termination shall not be changed until subsequent filings are submitted to the board and become effective under regulatory procedures set forth in other subsections of this regulation and Regulation (49.5).

(9) The board may reject any price posting which it deems to be in violation of this or any other regulation or portion thereof which would tend to disrupt the orderly sale and distribution of beer. Whenever the board shall reject any posting the licensee submitting said posting may be heard by the board and shall have the burden of showing that said posting is not in violation of regulation and/or does not tend to disrupt the orderly sale and distribution of beer. Thereupon, if said posting is accepted, it shall become effective at

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the time fixed by the board. If said posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this regulation.

(10) All price postings filed as required by this regulation shall at all times be open to inspection to all trade buyers within the state of Washington and shall not within any sense be considered confidential.

(11) A retail licensee at his option and upon payment of the posted delivered price as defined in Rule 49 of these regulations, may take delivery of beer at the platform of a beer wholesaler, provided that such platform delivery shall be made only upon presentation to the beer wholesaler, at the time of such delivery, of a special identification card issued by the board to the retail licensee.

Such special identification cards shall be in such form as the board may prescribe and shall be issued to a retail licensee upon receipt by the board of such licensee's written request therefor.

### III.

The petitioner herein is composed of beer and wine wholesalers doing business in the state of Washington. The proposed modification of said rule will allow greater flexibility to the wholesaler in the distribution of the commodity involved, and, further will, under certain circumstances, facilitate the "ease" of distribution which will be beneficial not only to the wholesaler, but the retail licensees and the consuming public.

WHEREFORE, petitioner respectfully requests the Washington State Liquor Control Board to amend Rule (49) of Rules and Regulations promulgated by said board, in accordance with the proposed amendments set forth in paragraph II herein.

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BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of the Petition of )  
WASHINGTON BEER & WINE )  
WHOLESALE ASSOCIATION, ) PETITION  
INC. )  
For Amendment to Rule (81) )

Comes now Washington Beer & Wine Wholesalers Association,  
Inc., petitioner herein, and states:

I.

Washington Beer & Wine Wholesalers Association, Inc., 1006  
Securities Building, Seattle, Washington, 98101, hereby petitions the State  
Liquor Control Board, seeking the amendment of Rule (81).

II.

Petitioner seeks the amendment of the rule, substantially as  
set forth hereafter:

(81) WINE WHOLESALE PRICE POSTING (WAC 314-24-190)

(1) Every wine wholesaler shall file with the board  
at its office in Olympia a wine price posting, showing the  
delivered wholesale prices at which any and all brands of wine  
offered for sale by such wine wholesaler shall be sold to  
retailers within the state.

(2) All price postings must be received by the  
board not later than the fifteenth day of the month, and if  
approved, will become effective on the first day of the calendar  
month following the date of such filing. An additional period,  
not to exceed five days will be allowed for revision of a price  
posting, to correct errors, omissions, or to make normal  
price changes, but a revised posting must be on file at the  
board office by not later than the twentieth day of the month  
in order to become effective on the first day of the next  
calendar month.

(3) Filing Date Exception - Whenever the fifteenth  
day of any month falls on Saturday, Sunday or a legal holiday,  
an original price posting may be filed not later than the close  
of business the next business day.

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(4) In the event that a wine wholesaler determines to make no changes in any items or prices listed in the last filed and approved schedule, such prices listed in the schedule previously filed and in effect, shall remain in effect for each succeeding calendar month until a revised or amended schedule is filed and approved, as provided herein.

(5) Postings shall be submitted upon forms prescribed and furnished by the board, and shall set forth:

(a) All brands, types and sizes of packages or containers of wine offered for sale in this state by such wine wholesaler, which packages or containers shall be limited to the sizes permitted in Regulation (66).

(b) The delivered wholesale prices thereof within the state, which prices shall include the state wine gallonage tax imposed under RCW 66.24.210, and allowances, if any, for returned empty packages of containers. Such posted prices shall not include the sales tax levied under RCW 82.08.150, which must be collected by the wine wholesaler and remitted directly to the state department of revenue.

(6) No wine wholesaler shall sell or offer for sale any package or container of wine at a price differing from the price of such item as shown in the price posting then in effect.

(7) Prices posted by a wine wholesaler shall be consistent as between the various packages and containers offered for sale.

(8) No wine wholesaler shall file a price on any item which, in fact, constitutes a "post off." Quantity discounts are prohibited. No price shall be posted which is below "cost," or below "cost of doing business," or a "loss leader" as those terms are defined in Regulation (124)(4). No wine wholesaler shall initiate or be a party to any disruptive pricing practices.

(9) Wholesale prices on a "close-out" item shall be accepted by the board only if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the wholesaler who posts such a "close-out" price shall not restock the item for a period of one year following the first effective date of such "close-out" price. The wholesale price on such an item shall be deemed acceptable only if it is in compliance with the provisions of Regulation (124)(4).

(10) If an existing written contract or memorandum of oral agreement between a domestic winery, certificate of approval holder, wine importer, or wine wholesaler and a wine-wholesaler, as filed in accordance with Regulation (82),

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is terminated by either party, and a new written contract or memorandum of oral agreement is made by such a supplier with another wine wholesaler in the affected trade area, the board, after receiving such new written contract or memorandum of oral agreement, and a corresponding wholesale price posting from the newly-designated wine wholesaler, may put such filings into effect immediately; PROVIDED, that prices and other conditions of any such filings which are in effect at the time of such termination shall not be changed prior to the next applicable filing period.

(11) When a new wine wholesaler's license is issued for the first time by the board, the holder thereof may file an initial price schedule and request that such posting be placed into effect immediately. The board may grant such approval, providing that such posting is in compliance with all other applicable regulatory requirements, and that contracts and memoranda are on file, in accordance with Regulation (82).

(12) The board may reject any price posting or portion thereof which it deems to be in violation of this or any other regulation or which would tend to disrupt the orderly sale and distribution of wine. Whenever the board shall reject any posting, the licensee submitting said posting may be heard by the board and shall have the burden of showing that the posting is not in violation of regulation and/or does not tend to disrupt the orderly sale and distribution of wine. Thereupon, if said posting is accepted, it shall become effective at a time fixed by the board. If said posting or portion thereof is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved in accordance with the provisions of this regulation.

(13) A retail licensee, at his option, and upon payment of the posted delivered price as defined in Rule 81 of these regulations, may take delivery of wine at the platform of a wine wholesaler, provided that such platform delivery shall be made only upon presentation to the wine wholesaler, at the time of such delivery, of a special identification card issued by the board to the retail licensee.

Such special identification cards shall be in such form as the board may prescribe and shall be issued to a retail licensee upon receipt by the board of such licensee's written request therefor.

All price postings filed as required by this regulation shall be at all times open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

### III.

The petitioner herein is composed of beer and wine wholesalers doing business in the state of Washington. The proposed modification of

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said rule will allow greater flexibility to the wholesaler in the distribution of the commodity involved, and further, will under certain circumstances, facilitate the "ease" of distribution which will be beneficial not only to the wholesaler, but the retail licensees and the consuming public.

WHEREFORE, petitioner respectfully requests the Washington State Liquor Control Board to amend Rule (81) of Rules and Regulations promulgated by said board, in accordance with the proposed amendments set forth in paragraph II herein.

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